

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MAX REED II,

Plaintiff,

v.

NEVADA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

Case No. 3:14-cv-00313-MMD-VPC

ORDER

Before the Court is the Report and Recommendation of United States Magistrate Judge Valerie P. Cooke (dkt. no. 88) ("R&R") relating to Defendants' motion to dismiss and motion for summary judgment (dkt. nos. 45, 46.) The Magistrate Judge recommended that Defendants' motions be denied. Defendants have filed an objection to seek clarification from this Court. (Dkt no. 92.)

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge's report and recommendation where no objections have been filed.

1 See *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the
2 standard of review employed by the district court when reviewing a report and
3 recommendation to which no objections were made); see also *Schmidt v. Johnstone*,
4 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in
5 *Reyna-Tapia* as adopting the view that district courts are not required to review "any
6 issue that is not the subject of an objection.").

7 Defendants do not object to the Magistrate Judge's R&R. (Dkt. no. 92.) They file
8 their objection to ask whether this Court agrees to permit subsequent motion practice.
9 First and foremost, while Defendants do not specifically object to the Magistrate Judge's
10 decision, this Court finds it appropriate to nevertheless conduct a *de novo* review of the
11 Magistrate Judge's R&R. After reviewing the records in this case, the Court agrees with
12 the Magistrate Judge's recommendations. Defendants filed their motions seeking
13 dismissal under Rules 12(b)(1), 12(b)(6) and 56 of the Federal Rules of Civil Procedure
14 before filing their answer. The Magistrate Judge specifically recommended denying
15 Defendants' motions without prejudice and that Defendants be permitted the opportunity
16 to subsequently raise two of the arguments advanced in their motions relating to the
17 statute of limitations and supervisory liability. As to Defendants' arguments relating to
18 Plaintiff's First Amendment claim involving the adequacy of Ely State Prison's ("ESP")
19 law library, the Magistrate Judge observed that this claim involves a fact-intensive
20 inquiry and recommended denying summary judgment, finding that factual disputes
21 preclude summary judgment. While the Magistrate Judge did not specifically
22 recommend that Defendants be given the opportunity to subsequently raise their
23 arguments with respect to Plaintiff's Count II First Amendment claim involving access to
24 the ESP law library, the Court notes that Defendants would not be foreclosed from later
25 seeking summary judgment if discovery resolves the factual disputes in their favor.

26 It is therefore ordered, adjudged and decreed that the Report and
27 Recommendation of Magistrate Valerie P. Cooke (dkt. no. 88) is accepted and adopted

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1 in its entirety. Defendants' motion to dismiss and motion for summary judgment (dkt.
2 nos. 45, 46) are denied.

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4 DATED THIS 27th day of August 2015.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE